



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Number: **202015025**  
Release Date: 4/10/2020

Date:  
January 14, 2020  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL Number: 501.00-00, 501.06-00, 501.06-01

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date:  
November 21, 2019  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = State  
C = Date

**UIL:**

501.00-00  
501.06-00  
501.06-01

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(6). This letter explains the reasons for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under IRC Section 501(c)(6)? No, for the reasons stated below.

**Facts**

You were incorporated in the state of B on C. Your Articles of Incorporation state that you were formed specifically to aid, support, and assist the facilitation of physical and internet protocol interconnection and the efficient transmission of educational, scientific, medical, and other information and communications by creating and maintaining direct communications interconnections between and among members, and between and among members and internet access service providers.

You said your most important activity is facilitating the exchange of internet traffic among and between members. This activity will consist of soliciting members, establishing membership agreements, activating member ports on the exchange equipment, establishing efficient routing of traffic, and maintaining the ongoing exchange of traffic across the exchange platform. The purpose of this exchange of internet traffic is to increase the efficiency and performance of member networks, reduce operating costs for broadband service delivery by members, and increase the survivability of internet access in the region. This activity will constitute approximately percent of all of your activities.

You operate an internet exchange point (IXP) through which you provide connections to a common switching fabric for Border Gateway Protocol (BGP) route peering along with other associated technical services to your members. BGP route peering at the IXP increases the redundancy in the members' networks, improves user

experience by reducing latency when accessing content at the IXP or on another member's network, and provide the opportunity to lower a member's operating expense by moving traffic off their internet transit connections.

Besides operating the IXP, you co-organize and participate in an annual event for those interested in network peering. You help plan, organize, and host this event by securing a venue, facilitating registrations, and securing guest speakers from industry, government, and nonprofits to present on topics of current interest.

Per your service contract, members shall select at least one service option and pay the corresponding fee. Host sites may charge additional cross-connect or access fees for physical port connections. Members will be charged quarterly fees and a one-time fee based on the type of service they request. Members share in the cost of providing and maintaining the IXPs switching fabric and point of presence (PoP), along with other costs associated with your operations.

Per your membership agreement, your goals include sharing resources and information, providing aggregate services, fostering collaboration among members, and providing technical resources to support economic and workforce development within your region. Participant members must meet various technical requirements to connect to the IXP as defined in your Service Agreement. Parties that would like to become members but not participate in the IXP may become affiliate members but have no voting rights in the election of board members.

Your current members are ISPs, content providers, a large research and education focused network, and nonprofit organizations interested in improving the internet efficiencies, access and availability through education and interconnection of networks.

Most of your revenue is derived from member fees, with the remainder from educational events. Your biggest expense is for equipment space rental.

## **Law**

IRC Section 501(c)(6) provides exemption from federal income tax for business leagues not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Revenue Ruling 56-65, 1956-1 C.B. 199, denied exemption to a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses. These services include, but not limited to, promoting efficiency among members by

producing a publication that provides a list of specific projects from whom bids and quotations may be obtained by members.

Rev. Rul. 66-338, 1966-2 C.B. 226, describes a nonprofit organization formed to promote the interests of a particular retail trade. Field representatives of the organization call on the members to consult with them and advise them on their individual business problems. The activities provide the members of the organization with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis. Therefore, these activities constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. Consequently, the organization was denied exemption under IRC Section 501(c)(6).

Rev. Rul. 71-175, 1971-1 C.B. 153, ruled on a nonprofit organization whose principal activity was the operation of a telephone-answering service for member doctors. Providing a telephone-answering service the organization relieved the individual members of securing this service commercially, resulting in a convenience or economy in the conduct of the medical practice of its individual members. Therefore, the organization was rendering particular services for individual persons as distinguished from the improvement of business conditions in the medical profession and public health area generally. Thus, the organization was not exempt under IRC Section 501(c)(6).

In Indiana Retail Hardware Asso., Inc., v. United States, 177 Ct. Cl. 288 (1966), the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under IRC Section 501(c)(6).

### **Application of law**

You are not a business league as described in IRC Section 501(c)(6) and Treas. Reg. Section 1.501(c)(6)-1 because your activities are not directed to improving business conditions of one or more lines of business as defined under this subsection. Rather, you are formed to provide particular services to your members for a fee. You engage in a regular business of the kind ordinarily carried on for profit in that you provide specific services that would otherwise be necessary for each individual member to conduct on their own or through another entity.

Like the organization described in Rev. Rul. 56-65, you provide services to your members for a fee. You are also analogous to the organization described in Indiana Retail Hardware Asso., Inc., which failed to qualify for exemption under IRC Section 501(c)(6) because conducting services for members was a substantial activity. Because your primary activity is providing a service for your members, you are not exempt under Section 501(c)(6).

Similar to the organizations described in Rev. Rul. 66-338 and Rev. Rul. 71-175, you were formed to provide an economy and convenience to your members in the performance of individual businesses. Your purpose is to increase the efficiency and performance of member networks, reduce operating costs for broadband service delivery by members, and increase the survivability of internet access in the region. Through your subscriber agreement, you are providing services for the economy and convenience of your members, and not for the overall improvement of a line of business. Therefore, exemption under IRC Section 501(c)(6) is precluded.

### **Conclusion**

Your activities are not directed toward the improvement of business conditions of one or more lines of businesses, or any other purpose defined in IRC Section 501(c)(6). You provide a service for a fee for your members for their convenience and economy. Accordingly, you do not qualify for exemption as an organization described in Section 501(c)(6).

### **If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

### **If you don't agree**

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

**Where to send your protest**

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Mail Stop 6403  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

**Contacting the Taxpayer Advocate Service**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements